

Todd M. Friedman (216752)
Law Offices of Todd M. Friedman, P.C.
369 S. Doheny Dr. #415
Beverly Hills, CA 90211
Phone: 877 206-4741
Fax: 866 633-0228
tfriedman@attorneysforconsumers.com
Attorney for Plaintiff

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CALIF. - SAN JOSE

ADR

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

C10-00343

CHARLES MCKAIN,

Plaintiff,

vs.

WELTMAN, WEINBERG & REIS,
Defendant.

) Case No.
)
)

) COMPLAINT FOR VIOLATION
) OF FEDERAL FAIR DEBT
) COLLECTION PRACTICES ACT,
) ROSENTHAL FAIR DEBT
) COLLECTION PRACTICES ACT,
) AND INVASION OF PRIVACY
)
)

WHA

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection Practices Act, Cal Civ Code § 1788, *et seq.* (hereinafter "RFDCPA"), both of which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices. Ancillary to the claims above, Plaintiff further alleges claims for

1 invasion of privacy arising from intrusion upon seclusion and public disclosure of
2 private facts.
3

4 **II. JURISDICTION**

5 2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d).
6

7 **III. PARTIES**

8 3. Plaintiff, CHARLES MCKAIN ("Plaintiff"), is a natural person
9 residing in Santa Clara county in the state of California, and is a "consumer" as
10 defined by the FDCPA, 15 U.S.C. § 1692a(3) and is a "debtor" as defined by Cal
11 Civ Code 1788.2(h).
12

13 4. At all relevant times herein, Defendant, WELTMAN, WEINBERG
14 & REIS, ("Defendant") was a company engaged, by use of the mails and
15 telephone, in the business of collecting a debt from Plaintiff which qualifies as a
16 "debt," as defined by 15 U.S.C. § 1692a(5), and a "consumer debt," as defined by
17 Cal Civ Code § 1788.2(f). Defendant regularly attempts to collect debts alleged
18 to be due another, and therefore is a "debt collector" as defined by the FDCPA,
19 15 U.S.C. § 1692a(6), and RFDCPA, Cal Civ Code § 1788.2(c).
20
21

22 **IV. FACTUAL ALLEGATIONS**

23 5. At various and multiple times prior to the filing of the instant
24 complaint, including within the one year preceding the filing of this complaint,
25 Defendant contacted Plaintiff in an attempt to collect an alleged outstanding debt.
26
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1 Defendant's conduct violated the FDCPA and the RFDCPA in multiple ways,
2 including but not limited to:
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- 4 1. Causing a telephone to ring repeatedly or continuously to
5 annoy Plaintiff (Cal Civ Code § 1788.11(d));
6
- 7 2. Communicating, by telephone or in person, with Plaintiff
8 with such frequency as to be unreasonable and to constitute
9 an harassment to Plaintiff under the circumstances (Cal Civ
10 Code § 1788.11(e));
- 11 3. Causing Plaintiffs telephone to ring repeatedly or
12 continuously with intent to harass, annoy or abuse Plaintiff
13 (§ 1692d(5));
- 14 4. Communicating with Plaintiff at times or places which
15 were known or should have been known to be inconvenient
16 for Plaintiff, (§ 1692c(a)(1); and
- 17 5. Where Defendant had not yet made an attempt to contact
18 Plaintiff's counsel or had not given Plaintiff's counsel
19 sufficient time to respond to the initial attempt to
20 communicate with Plaintiff's counsel, and where Plaintiff's
21 counsel had not given Defendant permission to contact
22 Plaintiff directly, communicating with Plaintiff directly
23 after learning that Plaintiff is being represented by counsel
24 (§ 1692c(a)(2); Specifically, Defendant called Plaintiff on
25 multiple occasions after Plaintiff's counsel sent a notice
26 letter advising Defendant of representation on December
27 21, 2009. Defendant called Plaintiff on several occasions
28 on or about January 12, 2010 to January 15, 2010.
Defendant also sent letters to Plaintiff after Plaintiff's
original December 21, 2009 letter.

1 6. Defendant's aforementioned violations of the FDCPA and RFDCPA
2 also constitute an intentional intrusion into Plaintiff's private places and into
3 private matters of Plaintiff's life, conducted in a manner highly offensive to a
4 reasonable person. Plaintiff had a subjective expectation of privacy that was
5 objectively reasonable under the circumstances.
6

7
8 7. Defendant's aforementioned disclosure of facts regarding Plaintiff's
9 debt to third parties constitutes a public disclosure of a private fact not of
10 legitimate public concern. Defendant's disclosures were highly offensive to a
11 reasonable person.
12

13
14 8. As a result of the above violations of the FDCPA, RFDCPA and
15 invasion of privacy, Plaintiff suffered and continues to suffer injury to Plaintiff's
16 feelings, personal humiliation, embarrassment, mental anguish and emotional
17 distress, and Defendant is liable to Plaintiff for Plaintiff's actual damages,
18 statutory damages, and costs and attorney's fees.
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COUNT I: VIOLATION OF FAIR DEBT

COLLECTION PRACTICES ACT

9. Plaintiff reincorporates by reference all of the preceding paragraphs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the FDCPA;
- B. Actual damages;
- C. Statutory damages;
- D. Costs and reasonable attorney's fees; and,
- E. For such other and further relief as may be just and proper.

**COUNT II: VIOLATION OF ROSENTHAL
FAIR DEBT COLLECTION PRACTICES ACT**

10. Plaintiff reincorporates by reference all of the preceding paragraphs.

11. To the extent that Defendant's actions, counted above, violated the RFDCPA, those actions were done knowingly and willfully

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant for the following:

- A. Declaratory judgment that Defendant's conduct violated the RFDCPA;
- B. Actual damages;
- C. Statutory damages for willful and negligent violations;

1 D. Costs and reasonable attorney's fees,

2 E. For such other and further relief as may be just and proper.

3 **COUNT III: COMMON LAW INVASION OF PRIVACY BY INTRUSION**
4 **AND INVASION OF PRIVACY BY PUBLICATION OF PRIVATE FACTS**

5
6 12. Plaintiff reincorporates by reference all of the preceding paragraphs.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff respectfully prays that judgment be entered
9
10 against the Defendant for the following:

11 A. Actual damages

12 B. Punitive Damages; and,

13 C. For such other and further relief as may be just and proper.
14

15 **PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY**

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17
18 Respectfully submitted this 15th day of January, 2010.
19
20

21 By: _____
22 **TODD M. FRIEDMAN (216752)**
23 **LAW OFFICES OF TODD M.**
24 **FRIEDMAN, P.C.**
25 **369 S. Doheny Dr. #415**
26 **Beverly Hills, CA 90211**
27 **Phone: 877 206-4741**
28 **Fax: 866 623-0228**
tfriedman@attorneysforconsumers.com
Attorney for Plaintiff